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FEDERAL MARITIME COMMISSION

SEP 22 2014

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SMARTSTONE PRIVATE LIMITED

**Federal Maritime Commission
Office of the Secretary**

Docket No. 1946(F)

Claimant,

-against-

GENERAL NOLI USA, INC., and
SAVINO DEL BENE FREIGHT FORWARDERS
(INDIA) PVT LTD,

**ANSWER AND
REQUEST FOR
AN ORAL HEARING**

Respondents.

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Respondents General Noli USA, Inc. ("General Noli") and Savino Del Bene Freight Forwarders (India) Pvt Ltd ("SDB") (collectively. "Respondents"), by their undersigned attorneys, Clyde & Co US LLP, answering the Complaint of claimant Smartstone Private Limited ("Smartstone"). allege upon information and belief as follows:

I. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph I of the Complaint.

II.A. Deny each and every allegation in paragraph II.A. of the Complaint, except admit that General Noli is incorporated in the State of New York with its principal place of business at 148-08 Guy R. Brewer Blvd., Jamaica, New York 11434, is engaged in providing services as a non-vessel operating common carrier ("NVOCC"), and is recognized by the Federal Maritime Commission ("FMC") as a licensed NVOCC.

II.B. Deny each and every allegation in paragraph II.B. of the Complaint, except admit that SDB has a place of business at N. 409, 1st Floor, Sawera Apartments 5th Cross, 1st Stage, 3rd Block, HBR Layout, 560 043 Bangalore, India, and that Savino Del Bene U.S.A., Inc. is recognized by the FMC as a licensed NVOCC.

III.A. Deny each and every allegation in paragraph III.A. of the Complaint, except admit that General Noli is recognized by the FMC as a licensed NVOCC.

III.B. Deny each and every allegation in paragraph III.B. of the Complaint, except admit that Savino Del Bene U.S.A., Inc. is recognized by the FMC as a licensed NVOCC.

III.C. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph III.C. of the Complaint.

III.D. Deny each and every allegation in paragraph III.D. of the Complaint.

III.E. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph III.E. of the Complaint.

III.F. Deny each and every allegation in paragraph III.F. of the Complaint, except admit that SDB issued House Bill of Lading No. A712005108. dated 16/01/2012.

III.G. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph III.G. of the Complaint.

III.H. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph III.H. of the Complaint.

III.I. Deny each and every allegation in paragraph III.I. of the Complaint.

III.J. Deny each and every allegation in paragraph III.J. of the Complaint.

III.K. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph III.K. of the Complaint.

IV. [The Complaint does not contain a paragraph IV.]

**AS TO THE CAUSES OF ACTION
ALLEGED AGAINST RESPONDENTS**

V. Deny each and every allegation in paragraph V of the Complaint.

VI. Deny each and every allegation in paragraph VI of the Complaint.

VII. Deny each and every allegation in paragraph VII of the Complaint.

**FURTHER ANSWERING THE COMPLAINT, AND
AS AND FOR SEPARATE PARTIAL AND/OR COMPLETE
DEFENSES THERETO, THE RESPONDENTS, GENERAL
NOLI AND SDB ALLEGE UPON INFORMATION AND BELIEF AS FOLLOWS:**

VIII. The Respondents repeat and reallege each and every admission, denial and denial of knowledge or information set forth in paragraphs I through VII herein with the same force and effect as if set forth at length.

FIRST AFFIRMATIVE DEFENSE

IX. The Complaint is time barred under the Carriage of Goods by Sea Act ("COGSA") which provides in relevant part that a carrier will be "discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered." 49 Stat. 1207 § 6, note following 46 U.S.C. § 30701. *See Barretto Peat, Inc. v. Luis Ayala Colon Sucrs., Inc.* 896 F.2d 656, 659-61 (1st Cir. 1990) (affirming dismissal and holding that an improper delivery alleged under a bill of lading is governed by COGSA's one-year statute of limitations).

SECOND AFFIRMATIVE DEFENSE

X. The Complaint is time barred by the express terms of clause 17 of the bill of lading which discharges any liability of the freight forwarder unless suit is brought within 9 months after the delivery of the goods or the date when the goods should have been delivered or when failure to deliver the goods would give the consignee the right to treat the goods as lost.

THIRD AFFIRMATIVE DEFENSE

XI. The Complaint fails to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

XII. Claimant has failed to show that any cargo was delivered without any original bills of lading.

FIFTH AFFIRMATIVE DEFENSE

XIII. Claimant has failed to show that the cargo was loaded in good order and condition.

SIXTH AFFIRMATIVE DEFENSE

XIV. The documents submitted with the Complaint are unauthenticated.

SEVENTH AFFIRMATIVE DEFENSE

XV. The documents submitted with the Complaint constitute inadmissible hearsay.

EIGHTH AFFIRMATIVE DEFENSE

XVI. Claimant has failed to show that it has suffered any damage or injury.

NINTH AFFIRMATIVE DEFENSE

XVII. The FMC lacks jurisdiction over Respondent SDB as SDB is not a NVOCC licensed by the FMC.

TENTH AFFIRMATIVE DEFENSE

XVIII. Venue is improper, and the action should be dismissed, since the terms of the bill of lading contain a mandatory forum selection and choice of law clause requiring that any action against the freight forwarder be instituted only in the courts of Genoa, Italy and shall be decided according to the law of Italy.

ELEVENTH AFFIRMATIVE DEFENSE

XIX. Claimant's claims are barred, in whole or in part, by the doctrine of unclean hands.

TWELVETH AFFIRMATIVE DEFENSE

XX. Claimant has neither claimed nor established that either General Noli or SDB is a marine terminal operator.

THIRTEENTH AFFIRMATIVE DEFENSE

XXI. Claimant's Complaint fails to join indispensable parties.

FOURTEENTH AFFIRMATIVE DEFENSE

XXII. The Complaint fails to identify the name or the authority of the person signing the claim, reportedly on behalf of the Claimant.

RESPONDENTS' REQUEST FOR ORAL HEARING

XXIII. The Respondents repeat and reallege each and every admission, denial and denial of knowledge or information set forth in paragraphs I through XXII herein with the same force and effect as if set forth at length.

XXIV. The Respondents respectfully request an oral hearing pursuant to 46 C.F.R. § 502.315.

XXV. The filing of affidavits or other documents will not permit the fair and expeditious disposition of Claimant's Complaint for the reasons set forth below:

a. The documents filed with the Complaint are unauthenticated and constitute inadmissible hearsay.

b. Claimant has failed to show that it has suffered any damage or injury.

c. The alleged buyer of the subject cargo is not a party to this proceeding.

d. Claimant has failed to show that any cargo was delivered without any original bills of lading.

e. Claimant has failed to show that the cargo was loaded in good order and condition.

XXVI. The facts sought to be proved at an oral hearing are set forth below:

a. The facts and circumstances in respect to the alleged delivery of the subject cargo.

b. The facts and circumstances in respect to the alleged non-payment for the subject cargo.

WHEREFORE, Respondents respectfully request that the Complaint be dismissed or, alternatively, that an oral hearing be set before an Administrative Law Judge for the reasons set forth above. In the further alternative, Respondents respectfully request that they be granted additional time to supplement their response.

Dated: New York, New York
September 22, 2014

CLYDE & Co US LLP

John R. Keough, III
Casey D. Burlage
Zoë E. Sajor
The Chrysler Building
405 Lexington Avenue, 16th Floor
New York, New York 10174
Tel: (212) 710 3900
Fax: (212) 710 3950

*Attorneys for Respondents General
Noli USA, Inc., and Savino Del Bene
Freight Forwarders (India) Pvt Ltd*

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by electronic mail and by overnight courier a copy to each such person in sufficient time to reach such person on the date the document is due to be filed with the Commission.

Dated at New York, New York this 22nd day of September, 2014.

Signature:

A handwritten signature, appearing to be "JOSEPH A. J. R.", is written over a horizontal line.

For:

Respondents General Noli USA, Inc., and Savino Del Bene Freight Forwarders
(India) Pvt Ltd